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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205974
Party	Defendant Bauer Hockey, Inc.
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Attachments	91205974 Bauer NEXUS Answer.pdf (5 pages)(24596 bytes)

<p>SHER-WOOD HOCKEY INC.,</p> <p>Opposer,</p> <p>v.</p> <p>BAUER HOCKEY, INC.,</p> <p>Applicant.</p>	<p><u>Opposition No. 91205974</u></p> <p>Application Serial No. 85/442,066</p> <p>Filed: October 7, 2011</p> <p>Mark: NEXUS</p>
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Applicant Bauer Hockey, Inc. (“Applicant” or “Bauer”) answers the Notice of Opposition filed by Opposer Sher-Wood Hockey Inc. (“Opposer” or “Sher-Wood”) as follows.

1. Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 1 of the Notice of Opposition, and therefore denies them.

2. Applicant admits that, according to the USPTO online records, Opposer filed U.S. Application Serial No. 85498741 for the mark NEXON for the goods listed in Paragraph 2 of the Notice of Opposition (the “Sher-Wood Application”).

3. Applicant admits that the USPTO issued an Office Action dated April 4, 2012, preliminarily refusing the Sher-Wood Application based on the prior-filed Bauer Application (among other reasons).

4. Admitted.

5. Applicant admits that it filed the “Bauer Application” for the mark NEXUS for “hockey equipment and accessories” in International Class 28 (the “Original ID”) on October 7, 2011. Applicant denies Opposer’s characterization of the Original ID as “vaguely defin[ed].”

6. Applicant admits that the Bauer Application was filed under Section 1(a) of the Trademark Act, claiming use of the NEXUS mark in commerce in connection with the goods listed in the Original ID since at least as early as March 21, 2007.

7. Applicant admits that, according to the USPTO online records, the Sher-Wood Application was filed on December 19, 2011.

8. Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 8 of the Notice of Opposition regarding a “preliminary amendment” to the Bauer Application filed by Opposer, and therefore denies them. Applicant admits, however, that it filed a voluntary amendment to the Bauer Application on January 27, 2012 (the “Voluntary Amendment”), which amended the Original ID to the following identification of goods and filing bases:

"Hockey equipment, namely: ice hockey goalie equipment, namely: pads, catcher gloves, blocker gloves" in Class 28 under Section 1(a);

"Hockey equipment, namely: skates, sticks, gloves, protective gear, pants; ice hockey goalie equipment, namely: skates, sticks, pants, chest and arm protective gear; hockey equipment accessories, namely: athletic supports, athletic support cups, garter belts, wrist guards, neck guards, neck protectors, pucks, mouth

guards, skate lace hooks, blade guards" in Class 28 under Section 1(b); and

"Hockey equipment and accessories, namely: hockey helmets; face masks for hockey helmets; protective face-shields for hockey helmets; hockey goalie masks" in Class 9 under Section 1(b).

9. Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 9 of the Notice of Opposition regarding a "preliminary amendment" to the Bauer Application filed by Opposer, and therefore denies them. Applicant admits, however, that it did not submit a signed declaration in support of the Voluntary Amendment and that Applicant's attorney indicated her belief that no such declaration was required under the *Trademark Rules of Practice*.

10. Applicant admits that the USPTO Examining Attorney did not require Applicant to submit a signed declaration in support of the Voluntary Amendment.

11. Applicant admits that it did not submit a signed declaration "as to its bona fide intent to use the NEXON mark." To the extent Paragraph 11 of the Notice of Opposition was meant to refer to Applicant's NEXUS mark, Applicant admits that it did not submit a signed declaration in support of the Voluntary Amendment. Applicant denies that it expanded the goods in the Bauer Application.

12. Applicant admits that it did not have a bona fide intention to use the "NEXON" mark at the time it filed the Bauer Application. Applicant denies, however, the allegations contained in Paragraph 12 of the Notice of Opposition to the extent they were meant to refer to Applicant's NEXUS mark, for which Applicant had a bona fide intent to use when it filed the Bauer Application. Applicant denies that it expanded the goods in the Bauer Application.

13. Applicant admits that it did not have a bona fide intention to use the "NEXON" mark at the time it filed the Voluntary Amendment. Applicant denies, however, the allegations

contained in Paragraph 13 of the Notice of Opposition to the extent they were meant to refer to Applicant's NEXUS mark, for which Applicant had a bona fide intent to use when it filed the Voluntary Amendment. Applicant also denies that the Voluntary Amendment was improper in any manner. Applicant further denies that it expanded the goods in the Bauer Application.

14. Denied.

15. Denied.

16. Applicant admits that the Bauer Application was filed earlier than the Sher-Wood Application. Applicant denies the remaining allegations contained in Paragraph 16 of the Notice of Opposition.

17. Denied.

AFFIRMATIVE DEFENSE

18. The Notice of Opposition fails to state a claim for which relief can be granted.

WHEREFORE, Applicant respectfully requests that Opposition No. 91205974 be dismissed with prejudice.

Respectfully submitted,

Date: August 15, 2012

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Notice of Opposition was served on Opposer's counsel by First-Class mail, postage prepaid, this 15th day of August, 2012, addressed to:

Paul Fields, Esq.
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/Susannah C. Kolstad/
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